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ABSTRACT

The purpose of this paper is to explore the due-process rights of public employees. These particular rights are grounded in the constitutionally protected liberty interest in one's good name and reputation. Both employers and employees should be aware of what parameters case law provides with regard to the dimensions of this due-process right and how this liberty-interest issue has been addressed in the context of public education. Cases pertinent to the liberty interest in good name and reputation, resolved by the United States Courts of Appeal during the past 20 years, are presented and discussed by category: cause of action; "stigma plus"; defamation, involving charges of dishonesty, illegality, and immorality, charges of unsatisfactory performance, and dismissals standing alone; changes in employment status; loss of employment opportunities; publication, in which an employee's personnel file is or is not made public, or involving contrasting burdens of proof; denying the truth of an allegation, with discussion of the purpose of a denial and contrasting burdens of proof; due process, with discussion of purpose of hearing, employee request, adequate hearings, and not-adequate hearings; and concluding observations. (RT)

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# Due Process Rights in Public Education: The Constitutional Dimensions of an Employee's 14th Amendment Liberty Interest in Good Name and Reputation.

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November 2002

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# "Due Process Rights in Public Education: The Constitutional Dimensions of an Employee's 14th Amendment Liberty Interest in Good Name and Reputation"


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## Introduction

This purpose of this paper is to explore the due process rights of public employees that are grounded in the constitutionally protected liberty interest in one's good name and reputation. Even though the scope of this constitutional protection is relatively narrow, a review of case law reveals that this liberty interest issue is often raised. Both employers and employees should be aware of what case law tells us about the dimensions of this due process right and how this liberty interest issue has been addressed in the context of public education.

In Board of Regents v. Roth, 408 U.S. 564 (1972), the Court held that the nonrenewal of a nontenured state university teacher's contract implicated no constitutionally protected liberty or property interest that would invoke the protects of procedural due process. But the Court noted that this would have been a "different case" had the State based the nonrenewal on a charge, such as dishonesty or immorality, that might seriously damage his standing and associations in the community or that had the State in declining to re-employ him imposed on him a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities. Had the State done so, a constitutionally protected liberty interest would

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have been implicated and the teacher would have been entitled to a hearing for the purpose of clearing his name. Id. at 573-74.

The Court explained further in subsequent cases the dimensions of this due process right. Statements by government officials that are damaging to reputation, when not inflicted in conjunction with some other governmental action that changes one's legal status, do not implicate any protected liberty interest. Paul v. Davis, 424 U.S. 693 (1976). To implicate a protected liberty interest in one's good name and reputation there must be public disclosure of the reasons for discharge. Bishop v. Wood, 426 U.S. 321 (1976). And, the employee must challenge the substantial truth of the allegations. Codd v. Velger, 429 U.S. 624 (1977).

The Court has established the parameters for the process due when a protected property interest is at stake. Those procedures should also be appropriate in instances when a protected liberty interest is implicated. "[A]ll the process that is due is provided by a pretermination opportunity to respond coupled with post-termination administrative [or judicial] proceedings . . . ." Cleveland Bd. of Educ. v. Laudermill, 470 U.S. 532, 547-48 (1985). In some instances,however, a hearing prior to the deprivation is not required. The purpose of this hearing is to assure that there are reasonable grounds to support the charge. For example, an "ex parte finding of probable cause," such as a grand jury indictment or an arrest and filing of charges, provides adequate assurance that a suspension without pay is not unjustified. Gilbert v. Homar, 520 U.S. 924 (1997).

What follows is a discussion of how issues pertinent to the liberty interests in good name and reputation have been resolved by the United States Courts of Appeal during the past 20 years.

## Cause of Action

The elements of a cause of action for alleged violations of a plaintiff's liberty interests protected by the Due Process Clause vary somewhat, depending on the federal circuit. The outlines from five circuits serve to illustrate.

•To support a claim of a deprivation of a liberty interest, a plaintiff must show (1) that she has been stigmatized, (2) in or as a result of the "discharge" process, and (3) that the stigmatization resulted from charges made public by her employer. Upon this showing, the plaintiff is entitled to "a hearing to clear [her] name." Kelleher v. Flawn, 761 F.2d 1079 (5th Cir. 1985).

•To make out a claim for a deprivation of a liberty interest, plaintiff must show that: (1) he was stigmatized by the Board's conduct (I.e., that the Board defamed him); (2) the stigmatizing information was publicly

disclosed; and (3) he suffered a tangible loss of other employment opportunities as a result of the public disclosure. Strasburger v. Board of Educ., 143 F.3d 351, 356 (7th Cir. 1998).

•To establish a liberty interest based on reputation, an employee must prove the following: (1) the defendant made a statement impugning the plaintiff's good name, reputation, honor, or integrity, in that the statement indicated dishonesty, immorality, criminality, and/or racism on the part of the plaintiff; (2) the statement was false; (3) the defendant made the statement in the course of termination proceedings or the statement foreclosed future employment opportunities; and (4) the statement was published. Winegar v. Des Moines Indep. Cmty. Sch. Dist., 20 F.3d 895 (8th Cir. 1984).

•The procedural protections of due process will apply if (1) the accuracy of the charge is contested, (2) there is some public disclosure of the charge, and (3) it is made in connection with a dismissal or alteration of some right or status recognized by state law. Llamas v. Butte Cmty. College Dist., 238 F.3d 1123 (9th Cir. 2001); Vanelli v. Reynolds Sch. Dist. No. 7, 667 F.2d 773 (9th Cir. 1982).

•To show that defendants infringed a liberty interest, plaintiff must show several elements. First, the statements must impugn the good name, reputation, honor, or integrity of the employee. Second, the statements must be false. Third, the statements must occur in the course of terminating the employee or must foreclose other employment opportunities. And fourth, the statements must be published. Watson v. University of Utah Med. Ctr., 75 F.3d 569 (10th Cir. 1996).

<u>"Stigma Plus"</u>

Defamatory statements standing alone may serve as a bases for a state tort claim; they do not, however, constitute a deprivation of a constitutionally protected liberty interest. For a constitutional claim, the defamatory statements must be made in conjunction with some action that changes the plaintiff's employment status.

•Injury to reputation may be actionable under state defamation law, but defamation alone is not a deprivation of a liberty interest. Lancaster v. Independent Sch. Dist. No. 5, 149 F.3d 1228 (10th Cir. 1998); Vukadinovich v. Board of Sch. Trustees of Mich. City Area Schs., 978 F.2d 403 (7th Cir. 1992).

•A claim that defamatory statements were made in the course of terminating employment is often referred to as "stigma plus." See Vega v. Miller, 273 F.3d 460 (2nd Cir. 2001), cert. denied 122 S.Ct. 2295 (2002).

•The "reputation plus" standard requires that plaintiffs show that the government altered [their] status in a tangible way, and that an imposition of stigma or injury to reputation accompanied this change in status. Orange v. District of Columbia, 59 F.3d 1267 (D.C. Cir. 1995).

•Plaintiff must satisfy the stigma-plus test to maintain a cause of action for deprivation of a liberty interest. Hardiman v. Jefferson County Bd. of Educ., 709 F.2d (11th Cir. 1983).

•Stigma to reputation alone, absent some accompanying deprivation of present or future employment, is not a liberty interest protected by the fourteenth amendment. Edwards v. California Univ. of Penn., 156 F.3d 488 (3rd Cir. 1998), cert. denied 119 S.Ct. 1036.

•A biology teacher who resisted teaching evolution and shared his religious beliefs with students alleged that he had been reprimand by the principal, wrongly accused of teaching religion by local press, and harassed by other teachers. He contended that these defamatory statements damaged his reputation and thus violated his right to due process. His claim was rejected; allegations of injury to reputation, standing alone, are insufficient to support a claim for deprivation of a liberty interest. Peloza v. Capistrano Unified Sch. Dist., 37 F.3d 517 (9th Cir. 1994).

Defamation

Defamatory statements can take many forms. Some may serve as the basis for liberty interest claims, while others will not.

Charges of Dishonesty, Illegality, Immorality

•Allegation that a custodial worker was a thief was stigmatizing information that arose in connection with his discharge. Goetz v. Windsor Cent. Sch. Dist., 698 F.2d 606 (2nd Cir. 1983).

•A custodian was dismissed and barred from future employment based on allegations that he cheated in an interview process for a promotion by obtaining unauthorized access to a set of model answers. Had there been public disclosure of the charge, which he denied, those allegations would have implicated a protected liberty interest. Llama v. Butte Cmty. College Dist., 238 F.3d 1123 (9th Cir. 2001).

•A teacher was convicted of public intoxication and driving while intoxicated. Cancellation of a his contract for, among other things, "immorality (based on the conviction of violation of criminal laws resulting in an interference with the educational purposes)" implicated a protected liberty interest. But derogatory comments made by school officials after his dismissal did not, because at that point he faced no

further threat of dismissal. Vukadinovich v. Board of Sch. Trustees of Mich. City Area Schs., 978 F.2d 403 (7th Cir. 1992).

•A teacher's mid-year dismissal on grounds of immoral conduct would affect adversely his opportunities for future employment, thus imposing a stigma that entitled him to the protections of procedural due process. Vanelli v. Reynolds Sch. Dist. No. 7, 667 F.2d 773 (9th Cir. 1982).

•Allegations of child abuse are sufficiently stigmatizing to a teacher's reputation, honor, and good name in the community so as to implicate protected liberty interests. Winegar v. Des Moines Indep. Cmty. Sch. Dist., 20 F.3d 895 (8th Cir. 1994), cert. denied, 513 U.S. 964 (1994).

•A nurse in a university hospital produced evidence that her supervisors made public statements to the entire nursing staff that not only she had "illegally" delivered a baby but also that she lied about the incident. These public charges certainly impugned her honesty and integrity. She also produced evidence that these charges were false and that she was placed on indefinite administrative leave without pay. Thus, she made a showing that she was entitled to notice and a hearing to clear her name. Watson v. University of Utah Med. Ctr., 75 F.3d 569 (10th Cir. 1996).

•The nonrenewal of a tenured teacher's contract on a charge of immorality implicated his liberty interest. The charge stemmed from an incident in the teachers lounge during which, in a heated argument with another teacher, he swore either at the teacher or at a piece of office equipment. Rankin v. Independent Sch. Dist. No. I-3, 876 F.2d 838 (10th Cir. 1989).

Charges of Unsatisfactory Performance

•Stigmatizing comments may include matters other than charges of illegality, dishonesty, or immorality. The test of whether an employer's decision not to rehire denies that employee due process is met when it deprives that employee of the freedom to take advantage of other employment opportunities. An employee charged with derelictions largely within his or her own power to correct is not deprived of such an interest.. By contrast, a government announcement that it has fired an employee for incompetence or because that employee can no longer do the job carries more potential for future disqualification from employe than a statement the individual performed a job poorly. Donato v. Plainview-Old Bethpage Cent. Sch. Dist., 96 F.3d 623 (2nd Cir. 1996), cert. denied 519 U.S. 1150 (1997).

•The statement of reasons given for the dismissal of an assistant principal read like a bill of indictment, methodically reciting a litany of lack of professional competence. The accusations went to the heart of her professional competence and damaged her professional reputation to such an extent as to severely impede

her ability to continue in the education field in a supervisory capacity. As a consequence, the defendant deprived plaintiff of a liberty interest. Donato v. Plainview-Old Bethpage Cent. Sch. Dist., 96 F.3d 623 (2nd Cir. 1996), cert. denied 519 U.S. 1150 (1997).

•Simple charges of professional incompetence do not impose the sort of stigma that actually infringes an employee's liberty to pursue an occupation. Only if the circumstances so sully the employee's reputation or character that the employee will essentially be black-listed in his or her chosen profession will it be possible to pursue a due process liberty interest claim. Head v. Chicago Sch. Reform Bd. of Trustees, 225 F.3d 794 (7th Cir. 2000).

•A delivery person in a university purchasing department, who was an "at-will" employee, was dismissed for insubordination and poor performance. He claimed that he was deprived of a Fourteenth Amendment liberty interest in obtaining future employment by defendants in that they, by checking "no rehire" on his termination report, "blackballed" his future opportunities for employment. To prevail on this claim, plaintiff was required to prove that there was a publication of a defamatory statement that would tend to jeopardize employment opportunities. Charges of insubordination or poor work habits are not considered to be stigmatizing. Walker v. Elbert, 75 F.3d 592 (10th Cir. 1996).

•Teacher competencies (such as teaching performance and interpersonal relationships in the community) are not matters of constitutional dimensions; a statement that simply alleges conduct that fails to meet professional standards is a statement that does not impinge on a liberty interest. Raposa v. Meade School Dist. 46-I, 790 F.2d 1349 (8th Cir. 1986).

•Coaches claimed that when the school board decided not to rehire them, several members of the board made public statements about them that deprived them of their liberty. The statements were as follows: a change in coaches would be good for the school's athletic program; coaches had over 50 years' combined coaching experience and it was time for a change; good athletes didn't go out for sports because they didn't want to play for these coaches; and there were problems with profanity, lack of respect, discipline, and fairness. These statements did not meet the requisite standards for deprivation of a liberty interest. Smith v. Board of Educ. of Urbana Sch. Dist. No. 116, 708 F.2d 258 (7th Cir. 1983).

•A school board did not renew the contract of an assistant superintendent; the reasons for the nonrenewal were essentially that she was unable to perform her job because she was adversarial and unable to get along with and gain the respect of her coworkers. Those comments, which were made public pursuant to statute, were not found to implicate a liberty interest. Sullivan v. School Bd. of Pinellas County, 773 F.2d 1182 (11th Cir. 1985).

•Assuming that the superintendent told prospective employers that an assistant superintendent was terminated for "incompetence and outside activities," this does not amount to the type of communication which gives rise to a protected liberty interest. Allegations of incompetence do not imply the existence of serious character defects such as dishonesty or immorality and are not the sort of accusations that require a hearing. Robertson v. Rogers, 679 F.2d 1090 (4th Cir. 1982).

•A university athletic director was dismissed because he expressed disagreement with policy positions of his superiors. He argued that he was dismissed shortly after a memorandum surfaced implying to the world that he was fired because of malfeasance. He claimed that the university's refusal to grant him a hearing to clear his name deprived him of his liberty interest in his reputation. Even assuming that the memorandum, followed closely by his dismissal, suggested that he was fired for misconduct, the president's termination letter stated that the "decision to terminate 'does not reflect unfavorably on your performance as Athletic Director . . . [and] the University is most grateful for your work in solidifying the management controls in the Department.'" This statement removes any possibility that he was stigmatized by his dismissal. Nothing further would be gained from a name-clearing hearing. Hall v. Ford, 856 F.2d 255 (D.C. Cir. 1988).

•The letter informing a non-tenured university faculty member that his contract would not be renewed stated that the problems he had in teaching to be sufficiently severe to warrant not reappointing him. Statements about teaching inadequacies do not state a claim of injury to a constitutionally protected liberty interest. Lovelace v. Southeastern Mass. Univ., 793 F.2d 419 (1st Cir. 1986).

•A nontenured principal challenged his early dismissal, alleging a violation of his liberty interests in reputation. But his dismissal was not subject to due process requirements, because it implicated no liberty interests. There were no publicized charges of moral turpitude or dishonesty; instead, the reasons stated in the letter he received amounted to dismissal for incompetence, inability to relate well with others, and lack of tack. Hayes v. Phoenix-Talent Sch. Dist. No. 4, 893 F.2d 235 (9th Cir. 1990).

Dismissal Alone

The fact of a dismissal, standing alone, is unlikely to be an adequate basis for a liberty interest claim.

•Although there is a general public commonsense perception that the loss of one's job can be stigmatizing in itself, a nonrenewal standing by itself does not satisfy the legal requirements necessary for a liberty interest violation. Wells v. Hico Indep. Sch. Dist., 736 F.2d 243 (5th Cir. 1984).

•An inference drawn from a dismissal alone, even an early dismissal, is insufficient to implicate a liberty interest. Hayes v. Phoenix-Talent Sch. Dist. No. 4, 893 F.2d 235 (9th Cir. 1990).

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•Mere nonrenewal of a teacher's contract is not such a blight upon his good name, reputation, honor, or integrity as to constitute a deprivation of liberty. Since the teacher proved nothing more, his liberty interests were not denied by nonrenewal of his contract. Noel v. Andrus, 810 F.2d 1388 (5th Cir. 1987).

•In conjunction with the nonrenewal of a principal's contract, the board president made a statement that appeared in the local newspaper that the nonrenewal based "on occurrences this year and continuance of previous concerns." That statement stigmatized him no more than the dismissal itself, and inferences drawn from a dismissal alone are not sufficient to implicate a liberty interest. Martin v. Unified Sch. Dist. No. 434, 728 F.2d 453 (10th Cir. 1984).

•A board that dismissed a school superintendent and "bought out" his contract did not implicate any protected liberty interest. His removal did not create any stigma nor render him unemployable. His good name was not called into doubt and no wrongdoing on his part was alleged. As a normal part of the political process, superintendents are frequently fired from one place and hired at another. Holloway v. Reeves, 277 F.3d 1035 (8th Cir. 2002).

•The denial of tenure or employment is not, by itself, stigmatizing conduct in the legal sense of the term. A termination is only stigmatizing if it impugns an employee's moral character or implies dishonesty or other job-related moral turpitude. Labeling an employee as incompetent or otherwise unable to meet an employer's expectations does not infringe the employee's liberty. There is no question that once a person has been denied tenure, finding another academic position is considerably more difficult; nevertheless, the plaintiff failed to show that the consequences of her tenure denial were no more severe than any other professional's failure to receive a desired promotion. Hedrich v. Board of Regents of Univ. of Wis. Sys., 274 F.3d 1174 (7th Cir. 2001).

•A university decided not to renew the contracts of two untenured assistant professors. They contended unsuccessfully that this decision restricted their liberty to take advantage of other employment opportunities. Although any dismissal or denial of reappointment, for whatever reason, may reflect negatively on a professor, this stigma alone is not of constitutional magnitude. Bunger v. University of Okla. Bd. of Regents, 95 F.3d 987 (10th Cir. 1996).

•A non-tenured librarian at a state university claimed a violation of her liberty interest, alleging that the dean had slandered her in the course of the nonrenewal hearings by stating publicly that she had to be removed "for the good of the library." There was, however, no showing that raised an implication that the university in merely declining to re-employ her imposed a stigma or other disability that foreclosed her

freedom to take advantage of other employment opportunities. Montgomery v. Boshears, 698 F.2d 739 (5th Cir. 1983).

Change in Employment Status

Not every change in employment status constitutes the "plus" that supports a liberty interest claim. Something akin to a dismissal is required.

•The nonpunitive reassignment of a teacher, unless it involves a change in status that could be regarded as a loss of employment, does not give rise to a liberty interest meriting due process protection. Raposa V. Meade Sch. Dist. 46-I, 790 F.2d 1349 (8th Cir. 1986).

•A teacher's suspension with pay for one week did not satisfy the "plus" of the "stigma-plus" test. Hardiman v. Jefferson County Bd. of Educ., 709 F.2d (11th Cir. 1983).

•A plaintiff claimed defamation in addition to removal as a university department head, contending that he was publicly defamed by the rumors that circulated in the department regarding his removal and by the provost's statement to a student newspaper that nonrenewal of his appointment was "in the best interests of the department." It was not clear, however, that defamation unaccompanied by termination of employment or another change in plaintiff's legal status constituted a deprivation of liberty under the fourteenth amendment; an individual has no constitutionally protected interest in reputation alone. Plaintiff was terminated as department head, but continued to be employed by the university as a full-time, tenured professor at full salary. He had made no showing that a definite range of opportunities was no longer open to him. In light of these facts, defendants' alleged actions did not violate his clearly established fourteenth amendment right to liberty. Garvie v. Jackson, 845 F.2d 647 (6th Cir. 1988).

•Since a university professor remained employed with pay during his suspension, his claim is barred. While his temporary removal from class duties may have further stigmatized him, this action does not constitute a deprivation of employment. Edwards v. California Univ. of Penn., 156 F.3d 488 (3rd Cir. 1998), cert. denied 119 S.Ct. 1036.

Loss of Employment Opportunities

Claims of a lost opportunity for other employment have generally been unsuccessful.

•A public school principal applied for two different higher administrative positions, but was not hired. She argued that school officials, by saying she was denied the appointments she sought because she lacked

managerial experience, stigmatized her and thus deprived her of occupational liberty. Her argument was deemed to be frivolous; a routine denial of a promotion to a position for which there are competing applicants is not the stuff out of which a violation of due process is made. Yatvin v. Madison Metropolitan Sch. Dist., 840 F.2d 412 (7th Cir. 1988).

•Due process protects a generalized right to choose one's field of employment, but one does not have a liberty interest in working for a specific employer. Thus, a decision to bar a custodian from future employment with the community college district did not violate his due process rights. Llamas v. Butte Cmty. College Dist., 238 F.3d 1123 (9th Cir. 2001).

•A football coach was suspended because of the way he treated his players; no explanation was given to the public. He alleged that the failure to provide the public with an explanation for the suspension and leaving people to speculate publicly stigmatized him and damaged his reputation. But to invoke the procedural protection of the due process clause through a claim of injury to liberty interests, a discharged public employee must allege, for example, that defendants imposed a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities. In this instance, the plaintiff had quickly obtained another teaching-coaching position. Lancaster v. Independent Sch. Dist. No. 5, 149 F.3d 1228 (10th Cir. 1998).

Publication

To maintain a cause of action for deprivation of a protected liberty interest, the plaintiff must show that the defendant was in some way responsible for making public the defamatory statements.

Publication in Personnel Files

•Even if defamatory charges are not publicized, when stigmatizing information is retained in an employee's personnel file, that may be sufficient to trigger due process protections, especially if the file were made available to prospective employers. Donato v. Plainview-Old Bethpage Cent. Sch. Dist., 96 F.3d 623 (2nd Cir. 1996), cert. denied 519 U.S. 1150 (1997); see also Winegar v. Des Moines Indep. Cmty. Sch. Dist., 20 F.3d 895, 899 n. 3 (8th Cir. 1994); Brandt v. Board of Coop. Educ. Serv.. 820 F.2d 41 (2nd Cir. 1987) (Brandt I).

No Publication

•A name-clearing hearing significantly reduces the risk that an employee will be dismissed with false stigmatizing charges placed in his or her personnel file. If and when the allegations are shown to be false,

their removal from the employee's file restores his or her freedom to seek future employment. Donato v. Plainview-Old Bethpage Cent. Sch. Dist., 96 F.3d 623 (2nd Cir. 1996), cert. denied 519 U.S. 1150 (1997).

•The removal of stigmatizing allegations from a teacher's personnel file and the superintendent's directive to subordinates not to reveal to prospective employers the allegations that led to teacher's dismissal vitiated the teacher's due process claim. There was no longer a likelihood that the teacher would be denied future job opportunities because of the allegations formerly contained in his file. Brandt v. Board of Coop. Educ. Serv., 845 F.2d 416 (2nd Cir. 1988) (Brandt II).

•A probationary teacher argued that his dismissal denied his liberty interests because it was based upon charges of dishonesty, based on his unauthorized use of a driver training car. There is no deprivation of liberty absent injury to employment or employment opportunities, with a later denial of procedural due process for its redress. His claim failed, however, because a plaintiff must establish public disclosure of the adverse allegations, and the teacher did not prove publication. Noel v. Andrus, 810 F.2d 1388 (5th Cir. 1987).

•Speculative rumors circulating in the community as a result of defendants' failure to publish disparaging statements do not establish a deprivation of a liberty interest. Lancaster v. Independent Sch. Dist. No. 5, 149 F.3d 1228 (10th Cir. 1998).

•A principal did not establish a protected liberty interest, because he failed to show that the board voluntarily disclosed to the public the reasons for his reassignment . Wooten v. Clifton Forge Sch. Bd., 655 F.2d 552 (4th Cir. 1981).

•Communication of stigmatizing statement only to other administrators does not satisfy the requirement that statement be made "public." See Vega v. Miller, 273 F.3d 460 (2nd Cir. 2001), cert. denied, 122 S.Ct. 2295 (2002).

•Stigmatizing information disseminated to the point that an outside private investigator was hired and a number of students were interviewed satisfied the publication requirement. Winegar v. Des Moines Indep. Cmty. Sch. Dist., 20 F.3d 895 (8th Cir. 1994).

•Even if the reasons in a letter to a principal dismissed before the end of the school year amounted to stigmatizing charges, it would be irrelevant because the school district did not disclose the reasons to the public. Hayes v. Phoenix-Talent Sch. Dist. No. 4, 893 F.2d 235 (9th Cir. 1990).


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•To allow the potentially stigmatized party to satisfy the publication prong by disseminating details surrounding his termination would contradict the purposes of the publication requirement. Llamas v. Butte Cmty. College Dist., 238 F.3d 1123 (9th Cir. 2001).

•Injury to reputation cannot occur in the absence of public disclosure of the allegedly damaging statements. Notwithstanding a report's title, "President's Report to the Board," it was prepared solely for the incoming president and was neither circulated to the board of trustees nor made available to the public. Orange v. District of Columbia, 59 F.3d 1267 (D.C. Cir. 1995).

•A community college board did not compromise the superintendent's liberty interest by merely providing a public forum at which others independently may have defamed the superintendent. Loehr v. Ventura County Cmty. College Dist., 743 F.2d 1310 (9th Cir 1984).

•Once the charges against a community college employee were validated at an evidentiary hearing that comported with due process, a subsequent disclosure of the reasons for dismissal would not violate her constitutional rights. Jones v. Los Angeles Cmty. College Dist., 702 F.2d 203 (9th Cir. 1983).

Contrasting Burdens of Proof

•Plaintiff could not maintain his cause of action because he neither alleged nor proved that the school district was responsible for the charges against him becoming public knowledge. Hardiman v. Jefferson County Bd. of Educ., 709 F.2d (11th Cir. 1983).

•Plaintiff could proceed with lawsuit unless defendant school district officials could conclusively demonstrate that they did not disseminate stigmatizing information that plaintiff was fired because he was a thief. Goetz v. Windsor Cent. Sch. Dist., 698 F.2d 606 (2nd Cir. 1983).

Denying the Truth of the Allegations

To maintain a cause of action for deprivation of a liberty interest, the plaintiff must have denied the truth of the defamatory statements.

Purpose of Denial

•There would be no purpose in holding a name-clearing hearing if the charges are uncontroverted. Thus, a principal who did not deny the truth of the allegations made against her was not entitled to a name-clearing hearing. Coleman v. Reed, 147 F.3d 751 (8th Cir. 1998).

Contrasting Burdens of Proof

•A plaintiff must only raise the issue of falsity regarding the stigmatizing charges -- not prove it -- in order to establish a right to a name-clearing hearing. Brandt v. Board of Coop. Educ. Serv., 820 F.2d 41 (2nd Cir. 1987) (citing Codd v. Velger).

•An employee must show that a public official made defamatory statements about him. The statements must be false assertions of fact. True but stigmatizing statements that preclude further government employment do not support this type of claim, nor do statements of opinion, even stigmatizing ones, if they do not imply false facts. Because a teacher-coach could not provide evidence of false statements made by public officials, he could not satisfy the elements of the employment defamation cause of action. Strasburger v. Board of Educ. of Hardin County., 143 F.3d 351 (7th Cir. 1998).

Process Due

An employee's due process rights to protected liberty interests are vindicated by having available an opportunity for an adequate hearing.

Purpose of Hearing

•The hearing required is for the limited purpose of giving a discharged employee an opportunity to clear his or her name. The employer need not rehire the employee even if he or she can prove the inaccuracy of the stigmatizing allegations. Donato v. Plainview-Old Bethpage Cent. Sch. Dist., 96 F.3d 623 (2nd Cir. 1996).

Employee Request

•A college basketball coach, who was suspended and then terminated, claimed that his liberty interests were violated by publication of disparaging statements about his treatment of players. His claim failed because he did not sufficiently apprise the university of his desire for a name-clearing hearing following the dissemination of the statements. Ludwig v. Board of Trustees of Ferris State Univ., 123 F.3d 404 (6th Cir. 1997).

Adequate Hearings

•One's liberty interest is not implicated until the stigmatizing information is published. Although the advantages of a prepublication hearing should be obvious to a prudent public employer who wants to avoid

liability for a liberty interest deprivation, a name-clearing hearing may be constitutionally adequate even if it occurs after publication. Rankin v. Independent Sch. Dist. No. I-3, 876 F.2d 838 (10th Cir. 1989).

•A board gave a teacher notice and an opportunity to be heard by conducting a full evidentiary hearing, at which he was allowed to present evidence and the testimony of his witnesses, to cross-examine adverse witnesses, and to argue his position to the board. Due process (to protect an assumed liberty interest) required no more. Vukadinovich v. Board of Sch. Trustees of Mich. City Area Schs., 978 F.2d 403 (7th Cir. 1992).

•An arbitration hearing, a meeting with administrators prior to his suspension, and a hearing before administrators prior to his transfer, afforded a teacher an adequate opportunity to clear his name. Mustafa v. Clark County Sch. Dist., 157 F.3d 1169 (9th Cir. 1998).

•Even if a principal had been entitled to a name-clearing hearing, procedural due process was satisfied because she received not one, but two such opportunities. The due process requirements pronounced in Loudermill apply equally to liberty and property interests. She had a chance to explain the allegations in her meeting with an associate superintendent and before the Board at an open meeting. This is more than the administrators were constitutionally required to provide. Coleman v. Reed, 147 F.3d 751 (8th Cir. 1998).

•A hearing before the "committee on tenure and related problems," which include sessions each week for approximately nine months, resulted in a recommendation for dismissal of a law professor on grounds of moral turpitude. The charges were based on a sexual encounter with a student. The professor did, indeed, have a liberty interest in his reputation, deserving of due process protection. However, even if the university infringed that interest, the hearing had provided him with an adequate opportunity to clear his name. Tonkovich v. Kansas Bd. of Regents, 159 F.3d 504 (10th Cir. 1998).

•An assistant professor who had been denied tenure invoked his right to a hearing before a grievance committee to challenge that decision. That hearing also provided him an opportunity to refute any defamatory charges related to excessive drinking and other questionable behaviors. Beitzell v. Jeffrey, 643 F.2d 870 (1st Cir. 1981).

•A school bus driver dismissed for sexual misconduct with students claimed unsuccessfully that his pre-dismissal hearing was not constitutionally adequate. The board had informed him of the charges against him and gave him an opportunity to prove those charges false. The charges against him were based on the handwritten statements of ten different children who regularly rode his bus; he was allowed to see the statements, but the children were not identified nor did they testify at the hearing. He claimed that he was

not given a chance to attack the credibility of the children who had accused him. The was no chance, however, that all the children fabricated their stories because each gave her statement individually to a police investigator and in her own words; they statements did not reflect any common phrases and stories. Each child's statement was signed by a parent who reviewed the statement in the presence of the child and the investigator. These procedures adequately protected plaintiff against any risk that the children were out to get him. Green v. Board of Sch. Com'rs of City of Indianapolis, 716 F.2d 1191 (7th Cir. 1983).

Not Adequate Hearings

•A teacher who was attacked by a student defended himself. He was suspended. Subsequent investigations led to a charge of unjustified physical abuse and a punitive transfer to another school. Although he had an opportunity to present his side of the story prior to the suspension, he did not have an opportunity for a meaningful hearing later in the process, where he could present and cross-examine witnesses. Neither the meetings he had with school officials nor the extensive investigations conducted by outside investigators satisfied the requirements of due process. Winegar v. Des Moines Indep. Cmty. Sch. Dist., 20 F.3d 895 (8th Cir. 1994).

•A board voted to dismiss a teacher during the school year on grounds of immoral conduct. Prior to the dismissal the teacher had no opportunity for a hearing; then, about one month later the board did provide an opportunity for a legally adequate hearing. Although the dismissal was found to be justified, the teacher had been entitled to a pre-termination hearing and the case was remanded for a determination of compensatory damages for the board's violation of procedural due process in that it failed to protect the teacher's liberty interest. Vanelli v. Reynolds Sch. Dist. No. 7, 667 F.2d 773 (9th Cir. 1982).

•A employee's opportunity to meet with an administrator who was three steps removed from the community college board that actually made the decision to dismiss her was to remote from the actual decision-makers to provide the requisite due process. Jones v. Los Angeles Cmty. College Dist., 702 F.2d 203 (9th Cir. 1983).

Concluding Observations

•In many instances, a hearing adequate to protect an employee's liberty interest will already be available to protect the employee's property interest pursuant to statute, policy, or contract.

•Even if no hearing is required by statute, policy, or contract, administrators should be alert to the possible constitutional requirement for making a hearing available for an employee to challenge defamatory statements made in conjunction with a dismissal.

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•If an employee is informed of the reasons for the dismissal, and those reasons constitute allegations of dishonesty, illegality, or immorality, then it would seem reasonable to afford that employee an opportunity to refute those charges before the officials making the dismissal decision.

•If defamatory information is maintained in a personnel file, then the employee should be made aware of that information and given an opportunity to refute it.

•In most instances, the less made public about the grounds for a dismissal, the better. But sometimes circumstances may demand that some reasons be given. If so, the explanation should focus on what the person did or failed to do, not on that person's traits or characteristics.

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